IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

Appeal No.l65 of 2005
in
Arb Petition No.447 of 2004

Abid Hussain Meherbankhan. appellant
vs
Chhotekhan Ghasikhan .. respondent

Mr. R.N.Kachare for appellant
None for respondent

CORAM: A.P.SHAH & S.J.VAZIFDAR JJ.

Dated 7.3.2005

P.C:

. This is an appeal against the order of the learned single Judge dismissing the arbitration petition under section 34 of the Arbitration and Conciliation Act, l996, hereinafter called the 'Act'. The award of the arbitrator has been challenged essentially on two grounds (i) that the arbitrator has not taken into consideration and given finding on the question whether there was a valid arbitration agreement between the parties and, therefore, the award is liable to be set aside and (ii) that the finding of the arbitrator in para 32 of the award inter alia refusing to accept the evidence of the handwriting expert on the ground that he was not familiar with the script which was in Urdu is a serious error of law and, therefore,

require to be interfered with under section 34 of the Act. We find absolutely no merit in either of the submissions.

. So far as the first submission is concerned, in our opinion the issues which are framed by the arbitrator in respect of the validity of the partnership and/or contention whether it is forged or not in issue nos.l to 4 framed by the arbitrator and the discussion which has been made in respect of the said issues indicate that the arbitrator has considered the issues whether there is a valid arbitration agreement or not. Having given the finding that there was a valid deed of partnership it necessarily follows that there was a valid arbitration agreement between the parties. Thus the submission of the learned counsel that the arbitrator has not given any finding on the issue of existence of a valid arbitration agreement must be rejected.

. The second submission of the learned counsel that the arbitrator has committed error of law in refusing to accept the evidence of handwriting expert cannot be entertained in a petition under section 34 of the Act. In our opinion the finding given by the learned Arbitrator in para 33 of the

award is passed on evidence and material on record before the arbitrator. The learned arbitrator has considered the evidence and has found that the evidence of the handwriting expert was not reliable and was not believable and accordingly discarded the same . The finding of the arbitrator is based on material on record and is essentially a finding of fact and cannot be interfered within limited jurisdiction under section 34 of the Act.

In the result appeal is dismissed.